IN THE MATTER OF

COUNTY BOARD OF APPEALS

BALTIMORE COUNTY CASE NO. 83-456-SPH CASE NO. 88-457-SPH

#### OPINION

These cases come to the Board on appeal from a decision of the Zoning Commissioner which granted in part and denied in part the Petitions for Special Hearing in Case No. 88-456-SPH and Case No. 88-457-SPH in the 12th Election District of Baltimore County.

Upon mutual agreement by all parties, these cases were consolidated to be heard simultaneously. Case No. 88-456-SPH concerns the property known as 2502 Yorkway containing five living units and Case No. 88-457-SPH identified as 2508 Yorkway containing six living units. The matter before the Board concerns the alleged nonconforming use to be afforded these two buildings.

Testimony was received from George Foudos, 2 Elmhurst Avenue, the owner of both buildings purchased in 1971. At that time, 2502 contained five units and 2508 contained six units, the additional units in these two buildings being utilized in the basements. It was his testimony that these extra units were added some time around 1957.

Michael B. Dallas, property line surveyor, submitted site plans as Petitioner's Exhibit #1 and #2 and testified that existing zoning was D.R. 10.5 and that his investigation indicated that the zoning prior to 1945 was D -Residential.

Mrs. Nancy Capecci testified of her knowledge of these two specific sites and the area in general. It was her testimony that she purchased

Case No. 88-456-SPH and Case No. 88-457-SPH George A. Foudos, et ux

2528 Yorkway in December of 1946, lived there until 1962, rented it until 1985 and sold it in February of 1985. She entered as Petitioner's Exhibit No. 3 a flyer advertising the properties for sale that occasioned her original purchase in December of 1946.

Griffith Davis, a former owner of 2510 Yorkway, testified that he owned the property in 1960, that he knew 2508 well, that it had always been rented, and that his knowledge in 1960 was that 2502 had five units and 2508 contained six units. It was his testimony that it was common throughout the area for the end-of-group units to contain six apartments and the middle-ofgroup units to contain five apartments.

Kathy Phillips from the Baltimore County Assessments Office presented Assessment records back to 1949 indicating both buildings to contain only four apartments. No records between 1949 and 1955 were presented. This concluded Petitioner's case.

The brief summary presented above is merely a general summation of the testimony presented. But the record will contain the complete testimony and will stand as such.

It is clear to this Board that these apartment buildings were erected circa 1943 and each contained four apartments, two on the first floor and two on the second, and were constructed with the proper zoning afforded them at that time. In 1955, the zoning regulations were changed, and these fourunit apartment buildings became a legitimate nonconforming use. It appears from the testimony presented this day that, as long as the original builder owned the units, each contained four units. When the units were sold to individuals, some time in the 1946 area, individual owners added the fifth and sixth units in the basement. No testimony was received as to precisely when

Case No. 88-456-SPH and Case No. 88-457-SPH George A. Foudos, et ux

this was accomplished nor to the area encompassed in the additional units. The Board will find as a fact that the legitimate nonconforming use encompasses the use of the building as four residential units. The Baltimore County Zoning Regulations (B.C.Z.R.), Section 104.1, state: "No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25% of the ground floor area of the buildings so used." Since the Board is finding as a fact that the use of the building encompasses four residential units, the fifth unit under the conditions stated in 104.1 would be a legal expansion of the four original uses. The expansion of the use to six residential uses would exceed the limitations imposed in 104.1. It is therefore the opinion of this Board that the use of 2502 Yorkway as a five-unit apartment dwelling should be allowed. It is the further opinion of this Board that the use of 2508 Yorkway as a sixunit apartment dwelling exceeds the allowable expansion of the original nonconforming use and must be reduced to five apartments.

ORDER

It is therefore this 21st day of February , 1989 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing for nonconforming use of 2502 Yorkway in Case No. 88-456-SPH Case No. 88-456-SPH and Case No. 88-457-SPH George A. Foudcs, et ux

as a five-unit apartment dwelling be and the same is GRANTED;

IT IS FURTHER ORDERED that the Petition for Special Hearing for a six-apartment use at 2508 Yorkway in Case No. 88-457-SPH be and the same is DENIED in part; and

IT IS FURTHER ORDERED that the building known as 2508 Yorkway in

Any appeal from this decision must be made in accordance

Case No. 88-457-SPH be allowed a legitimate nonconforming use of five units.

with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF AFPEALS

OF BALTIMORE COUNTY

IN RE: PETITION FOR SPECIAL HEARING \* SS of Yorkway, 270' /-W of ZONING COMMISSIONER Admiral Boulevard (2502 Yorkway)

7th Councilmanic District \* OF BALTIMORE COUNTY 12th Election District CASE # 88-456-SPH George A. Foudos, et ux Petitioners

\*\*\*\*\*\*\*\*

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to approve a nonconforming use of a 5 unit apartment building in the D.R. 10.5 zone as more particularly described on Petitioner's Exhibits 1 and 5.

The Petitioner, Ceorge A. Foudos, represented by Anthony DiPaula, appeared and testified. Also appearing on behalf of the Petitioner were Nancy E. Capecci, Anita Cavoures, Griffin Davis and Kathy Phipps, representing the State Department of Assessment and Taxation and Michael Dallas, Registered Land Surveyor. There were no Proter ants.

Testimony indicated that the subject building was constructed during the period of approximately 1943 thru 1946. The building and lot is commonly referred to as 2502 Yorkway in the 12th Election District. Property is currently zoned D.R. 10.5 and is improved with an apartment building consisting of 5 units. The original building had 4 apartments. There are two units on the first floor and two units on the second floor and two units in the basement. The remaining portion of the basement is improved with storage and utility space. The subject property is also serviced by a rear parking area which is accessed off of a common alley.

The testimony and evidence in the records substantiates that the building was originally constructed as a four unit apartment building. The property has been consistently used as an apartment building since

its original development.

The Petitioners stated that they acquired the property in 1971. They testified that the buildings have been in continuous use as apartments since their purchase. The Custodian of Assessment of Records from the State of Maryland Assessment and Taxation testified the earliest assessment shown for the subject property is 1948. This assessment states there were 4 apartment units located in the structure at that time.

The evidence tends to indicate that the subject property was zoned "D" residential during the 1945 Baltimore County Comprehensive Zoning. "D" residential as set forth in the 1945 Baltimore County Zoning Regulations (B.C.Z.R.) also permitted all uses in "C" residential which permitted, as a matter of right, apartment houses. During the 1955 zoning regulations revisions, the zoning classification for the subject site was changed. The regulations did not permit apartment houses and, therefore, the subject property became nonconforming as of the adoption of the 1955 regulations.

The evidence establishes that the exterior parameters of the subject building has not changed or been altered since the original construction. There has not been any additional construction to the subject building. However, the interior area has been improved to accommodate 1 basement level apartment. There is no evidence that the additional apartments on the basement level were in existence prior to the early 1960s.

The first issue to be determined in the nonconforming case is whether or not the subject property was legally and permissibly

nonconforming status. In reference to subject property known as 2502 Yorkway, the 4 apartment building was permitted and/or constructed prior to the adoptions of the 1945 zoning regulations. It is equally clear that the structure was in conformity with the "D" residential zoning which was placed upon the subject land in 1945 and was a permissible use, pursuant to the 1945 B.C.Z.R. The 4 apartment

The property known as 2502 Yorkway was a legally permitted use until the regulations were changed on March 30, 1955. At that point in time, the building became a nonconforming use.

building on this site was legally established and operated.

The second principal to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not any change that has occurred is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A2d. 96 (1978).

Clearly, the use of the subject property has not changed since 1943. This has always been an apartment house and there have been no breaks or changes in that use.

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or

not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."

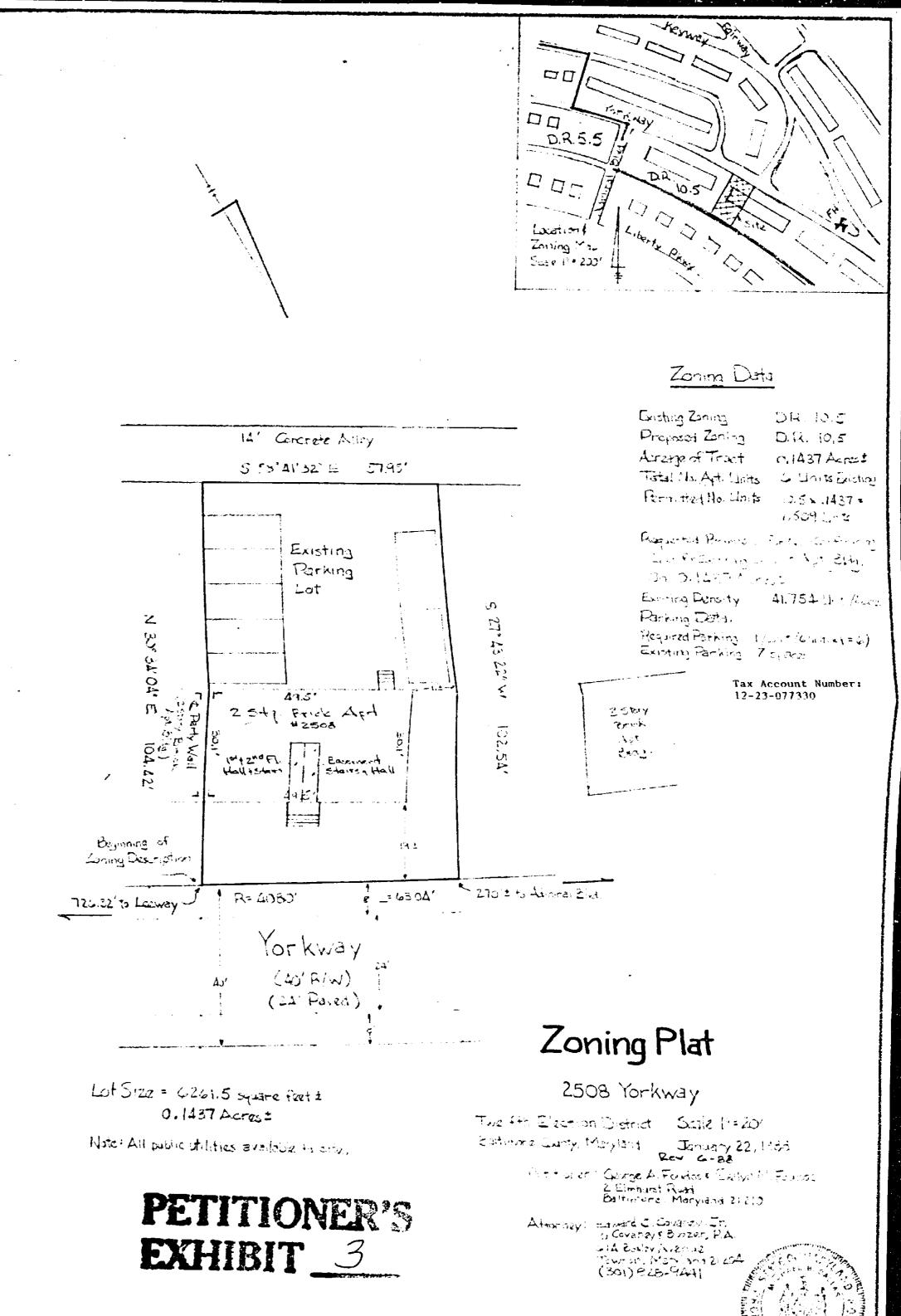
See McKemy v. Baltimore County, Md., 39 Md. App.257, 385 A2d. 96 (1978).

The question of expansion or intensification becomes a factual one with each case turning on its own facts. Phillips v. Zoning Commissioner of Howard County, 225 Md. 102, 109 (1961). The Courts of Maryland have been called upon to decide the question of enlargement versus intensification, on several occasions, and have laid down basic definitional guidelines. In the case of Prince Ceorge's County v. E.L. Gardner, Inc., 47 Md. App. 47 (1981), the Court of Special Appeals stated:

> A distinction is to be drawn between the enlargement or extension of nonconforming uses and intensification of such lawful uses. An increase in floor space either arising from an addition to an existing building or in a separate building; an increase in the area of a lot used for nonconforming uses; or a change in business methods or the provision of new accessory facilities with the resulting extension of the use involved have all been held to be proposals for the enlargement of a nonconforming use.

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# County Moard of Appeals of Baltimore County

COUNTY OFFICE BUILDING 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 49403180: 887-3180

AMENDED -- TO REFLECT CHANGE IN TIME FOR #88-457-SPH to 11:00 a.m.

#### January 26, 1989 NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-456-SPH and NO. 88-457-SPH

GEORGE A. FOUDOS, ET UX SS of Yorkway, 125' +/- E of Admiral Blvd. SS of Yorkway, 270' +/- W of Admiral Blvd. 12th Election District 7th Councilmanic District

9/24/88 -Z.C. granted in part; denied in part

SPH -Nonconforming use

This amended notice reflects a change in time for Case No. 88-457-SPH, at the request of Counsel for Petitioners. THERE IS NO OTHER CHANGE. ASSIGNED FOR:

WEDNESDAY, FEBRUARY 8, 1989 at 10:00 a.m. (88-456-SPH) WEDNESDAY, FEBRUARY 8, 1989 at 11:00 a.m. (88-457-SPH)

cc: Anthony M. DiPaula, Esquire Counsel for Petitioners /Appellants Mr. & Mrs. George Foudos

Petitioners /Appellants Edward C. Covahey, Jr., Esquire Counsel for Petitioners — Honorable Dale T. Volz Baltimore County Council Michael B. Dallas J. Carroll Mueller

P. David Fields Pat Keller J. Robert Haines Ann M. Nastarowicz James E. Dyer Docket Clerk -Zoning

Arnold Jablon, County Attorney

Assessments Kathleen C. Weidenhammer Administrative Secretary

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494 3353 J. Robert Haines

November 1, 1988

Dennis F. Rasmussen

Baltimore County Board of Appeals County Office Building, Room 315 Towson, Maryland 21204

RE: Petition for Special Hearing SS of Yorkway, 270' /-W of Admiral Boulevard (250% Yorkway) 12th Election District, 7th Councilmanic District George A. Foudos, et ux - Petitioners Case No. 88-457-SPH

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on September 9, 1988 by Anthony J. DiPaula, Attorney on behalf of Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Zoning Commissioner

cc: Mr. & Mrs. George A. Foudos, 2 Elmhurst Avenue, Balto., Md. 21210

Mr. Anthony J. DiPaula, Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, Md. 21204

Baltimore County Fire Department Towson, Maryland 21204-2586 494-4500

Paul H. Reincke March 10, 1988

J. Robert Haines Zoning Commissioner Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204

Dennis F. Rasmussen County Executive

Re: Property Owner: George A. Foudos, et ux Location: S/S Yorkway 270' +- W. of Admiral Blvd.

Item No.: 312

Gentlemen:

Zoning Agenda: Meeting of 3/8/88

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department

( ) 2. A second means of vehicle access is required for the site. ( ) 3. The vehicle dead end condition shown at \_\_\_\_\_

EXCEEDS the maximum allowed by the Fire Department. ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(  $_{
m X}$  ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

01/26/89:22.cb:3205-10:ecc

( ) 7. The Fire Prevention Bureau has no comments at this time.

Vire Prevention Bureau Special Inspection Division

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 2, 1988

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave. Towson, Maryland 21204

MEMBERS

Bureau of

Engineering

Edward C. Covahey, Jr. 614 Bosley Avenue Towson, Maryland 21204

RE: Item No. 312 - Case No. 88-457-SPH Petitioner: George A. Foudos, et ux Petition for Special Hearing Dear Mr. Covahey:

Department of Traffic Engineering State Roads Commission

JED:dt

Fire Prevention Realth Department Project Planning Building Department Board of Education Zoning Administration Industrial

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

paner E. Dyerld JAMES E. DYER ' Zoning Plans Advisory Committee

**H** 

Petition for Special Hearing

SS of Yorkway, 270' /-W of Admiral Boulevard

(2508 Yorkway)

GEORGE A. FOUDOS, ET UX - Petitioner

12th Election District - 7th Councilmanic District

Case No. 88-457-SPH

SPH - Nonconforming use of a 6 unit apt. dwelling in a D.R. 10.5 zone.

Entry of Appearance of People's Counsel (None submitted)

Petitioner's Exhibits: 1. Zoning Plat (2508 Yorkway)

Apartment and Granted w/ Restrictions 4 Unit Apartment)

Mr. Anthony J. DiPaula, Covahey & Boozer, P.A.,

Hon. Dale T. Volz, Baltimore County Courthouse

24 W. Pennsylvania Avenue, Towson, Md. 21204

Rm. 304, County Office Bldg., Towson, Md. 21204

400 Washington Avenue, Towson, Md. 21204

614 Bosley Avenue, Towson, Md. 21204

People's Counsel of Baltimore County

Michael B. Dallas, Suite 200,

Zoning Commissioner's Order dated August 24, 1988 (Denied 6 Unit

Notice of Appeal received September 9, 1988 from Anthony DiPaula

cc: Mr. & Mrs. George A. Foudos, 2 Elmhurst Avenue, Balto., Md. 21210

Mr. J. Carroll Mueller, Department of Assessments & Taxation

Baltimore Co. Courthouse, 400 Washington Avenue, Towson, Md. 21204

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Enclosures

# BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. J. Robert Haines TO Zoning Commissioner

> P. David Fields FROM Director of Planning and Zoning Zoning Petition Nos. 88-452-SpH 88-453-SpH, 88-454-SpH, SUBJECT\_88-456-SpH, 88-457-SpH

In view of the subject of this petition, this office offers no comment.

Date April 13, 1988

PDF:JGH:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel

88-457-SPH

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue Towson, Maryland 21204

Your petition has been received and accepted for filing this day of want

Attorney Edward C. Covahev, Jr. Advisory Committee

01/26/89:22.cb:3205-10:ecc 89 JAH 26 PH 4: 19 IN RE: PETITION FOR SPECIAL HEARING SS of Yorkway, 125'/-E OF \* BOARD OF APPEALS Admiral Boulevard (2502 Yorkway) OF BALTIMORE COUNTY 7th Councilmatic District 12th Election District Case # 88-457-SPH George A. Foudos, et ux. Petitioners/Appellants CUST \* \* \* \* \* \* \* \* SUMMONED **SUBPOENA** REASON NOT SERVETO: Betty Alford or her designee Tax Assessments and Transfer Office for Baltimore County OF BATHMORE COUNTY 105 West Chesapeake Avenue A EDWARD MALONE Jefferson Building, 2nd Floor Towson, Maryland 21204 YOU ARE HEREBY COMMANDED TO personally appear and produce documents or objects at the County Board of Appeals, Room 315 County Office Building, Towson, Maryland 21204, on Wednesday, the 8th day of February, 1989 at 10:00 a.m. YOU ARE COMMANDED TO produce the following documents or objects: all real property assessment records with respect to the properties known as 2502 and 2508 Yorkway (12th District) for the years 1953 through 1956. This Subpoena was requested by Anthony J. DiPaula, counsel for the Petitioners/Appellants, and all questions should be referred to him at 614 Bosley Avenue, Towson, Maryland 21204, (301) 828-9441. Date Issued: \_\_\_\_ NOTICE: (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA. (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court. Mr. Sheriff: Please issue the above summons. County Board of Appeals of Baltimore County

(3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d). SHERIFF'S RETURN ) - Served and copy delivered on date below. ) - Unserved, by reason of \_\_\_\_



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3180

February 21, 1989

Anthony J. DiPaula, Esquire COVAHEY & BOOZER, P.A. 614 Bosley Avenue Towson, MD 21204

> RE: Case No. 88-456-SPH and Case No. 88-457-SPH George A. Foudos, et ux

Dear Mr. DiPaula:

Enclosed is a copy of the final Opinion and Order issued this date by the County Board of Appeals in the subject

Sincerely,

Administrative Secretary

cc: Mr. & Mrs. George Foudos Edward C. Covahey, Jr., Esquire P. David Fields Pat Keller J. Robert Haines Ann M. Nastarowicz

Docket Clerk -Zoning

James E. Dyer

a. Jablon

Request Notification: P. David Fields, Director of Planning & Zoning Patrick Keller, Office of Planning & Zoning J. Robert Haines, Zoning Commissioner Ann M. Nastarowicz, Deputy Zoning Commissioner James E. Dyer, Zoning Supervisor Docket Clerk Assessments #2001-M.C.

2. Certified Copy of Page 866 (Chart from

Zoning Plat (2508 Yorkway)

Department of Assessments & Taxation)

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Copy of Violation Notice

Conversely, an increase in the volume of an existing business is usually referred to as an intensification rather than enlargement and such an intensification has been permitted under a valid nonconforming use. A distinction is sometimes made between extension and enlargement with the former referring to increased use of existing floor area within a building and the latter to the construction of a larger building.

Id. at 476 (Emphasis added)

The Courts of Maryland have been very clear in their construction of the concepts of intensification, expansion, extension and enlargement. As the Court of Appeals stated in Gardner, an extension is an increase in the use of existing floor area which is not a permitted intensification. Enlargements and extensions are concepts of the larger doctrine of expansion.

The facts of this case, clearly, fit the concept of an extension. As stated by the Petitioners, the building was originally constructed with four (4) apartments and an unfinished basement. The fifth apartment was added some years later, but there is no evidence either was added prior to 1955. Therefore, the floor area existed, but was not in use as apartments. When the fifth apartment was added, there was an extension of the apartment use to other (basement) existing floor space. This extension is an increased use of floor area which is an illegal expansion.

This extension is not a legally permitted intensification and, therefore, is not permitted as an element of the nonconforming use. This extension violates the fourth principal of McKemy set forth above. The fifth apartment extension also violates the doctrine set forth in the quoted part of Gardner.

From time to time, Section 104 of the B.C.Z.R. has been interpreted to permit a 25% extension when an additional apartment is added to an existing apartment building. In this case, a four (4) apartment building, adding one (1) apartment as a 25% permitted

This is a very simplistic view of Section 104 of the B.C.Z.R., but it is the wrong application of the case law. Section 104 permits an extension of no more than 25% of the ground floor area of the building in use. In this case, the ground floor area of the building is either two (2) apartments or, in the case of the basement as the ground floor, no apartments. I am of the opinion that it is incorrect to count apartments on the second floor in this case, or any floor, other than the ground floor in any case to determine what extension is permitted under the 25% rule.

The uncontradicted testimony, which was amply supported, conclusively indicates that the property has been used continuously and without interruption as a four (4) apartment building since 1945. After due consideration of the testimony and evidence presented, it is clear that a nonconforming use for a four (4) apartment building existed prior to March 30, 1955.

The fifth apartment located in the basement of 2502 Yorkway must be removed as an illegal extension of the nonconforming use.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be granted in part and denied in part.

Baltimore County this Aday of August, 1988 that the approval of a nonconforming use of a 5 unit apartment building in the D.R. 10.5 zone as more particularly described on Petitioner's Exhibits 1 and 5, be and is hereby DENIED.

four (4) apartments in the building known as 2502 Yorkway in a D.R. 10.5 zone, as more particularly described on Petitioner's Exhibit 1 and 5, be approved and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject to certain restrictions set forth below.

> 1. The Petitioner shall cease operation of the fifth apartment on or before December 30, 1988.

2. The Petitioner shall submit to the Zoning Commissioner's Office no later than December 1, 1988, a new site plan prepared by a registered professional engineer and/or land surveyor, which clearly identifies all buildings, their size and area dimensions, their exact location on the subject property, their distances from all property lines, the Order and restrictions of this opinion and any other information as may be required to be a certified site plan.

4. The Petitioner shall cause a deed restriction to be placed upon the deed of this property, clearly referencing zoning case #88-456SPH and restricting the development of this property to a maximum of four (4) apartment units.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for

IT IS FURTHER ORDERED, that approval of a nonconforming use for

3. The Petitioner shall permit the Office of Zoning Enforcement to make inspections of the subject property to assure compliance with this

06/27/88:211.MP:ECC3205-10

GEORGE A. FOUDOS, ET UX

(2502 YORKWAY)

IN RE:

BEFORE THE ZONING COMMISSIONER FETITION FOR SPECIAL HEARING \* SS YORKWAY, 125' /- E of ADMIRAL BOULEVARD

12TH ELECTION DISTRICT -7TH COUNCILMANIC DISTRICT GEORGE A. FOUDOS, ET UX

Case No. 88-457-SPH Petitioners \* \* \* \* \* \* \* \* \*

> BEFORE THE ZONING COMMISSIONER

BALTIMORE COUNTY

PETITION FOR SPECIAL HEARING \* SS YORKWAY, 270' /- W Of ADMIRAL BOULEVARD (2508 YORKWAY) BALTIMORE COUNTY 12TH ELECTION DISTRICT -7TH COUNCILMANIC DISTRICT

> \* Case No. 88-456-SPH Petitioners \* \* \* \* \* \* \* \*

### PETITIONERS! MEMORANDUM OF LAW

George A. Foudos and Evelyn M. Foudos, Petitioners, by Edward C. Covahey, Jr., Anthony J. DiPaula, and Covahey & Boozer, P.A., their attorneys, hereby submit this Memorandum of Law as requested at the conclusion of the hearing held before the Zoning Commissioner of Baltimore County on May 18, 1988.

### SUMMARY OF THE FACTS/TESTIMONY

Five witnesses, in addition to one of the Petitioners, were called to testify at the hearing. Inasmuch as the testimony was equally applicable to both properties filed as companion 06/27/88:211.MP:ECC3205-10

cases, each witness was only called upon to testify once. The properties at issue are known as 2502 and 2508 Yorkway, presently used as a five-unit and six-unit apartment dwelling, respectively. The testimony established through Nancy Capecci, Anita Cavoures, Griffin Davis, and the Custodian of Records from the Baltimore County Tax Assessment Office, that the buildings in question were constructed between the period 1943 to 1946 as four-unit apartment buildings and have been i: constant use since that time. Mrs. Capecci and Mrs. Cavoures, both having owned and still owning neighboring properties dating back to 1947, established the thriving use of the properties and their continuous rental. Griffin Davis had personal knowledge of the use of the properties dating back to the early 1960's, and that at that time there were more than four units in each building as far back as he could recall.

The Petitioners acquired the properties in 1971 and could testify from first hand knowledge as to their continuous use as apartment dwellings since that time. The Custodian of the Assessment Records testified that the earliest assessment shown was from 1948, again establishing their use as four-unit apartment dwellings at that time. There were no protestants, and all of the testimony was consistent. Essentially, all of the apartment buildings in that surrounding area have been consistently rented since their construction for reason that they constitute comfortable, roomy, yet affordable housing in the Dundalk area.

06/27/88:211.MP:ECC3205-10

The only question left unanswered by all of these witnesses was exactly when the fifth apartment unit was added to 2502 Yorkway, and the fifth and sixth units added to 2508 Yorkway.

Michael B. Dallas was also called to testify as a registered land surveyor, and he offered expert testimony as to the present zoning of the property, the consistency of the existing use with the surrounding area, and whether the current use of the property is otherwise consistent with the requirements of the Baltimore County Zoning Regulations. Essentially, his answers were in the affirmative. The properties are zoned DR10.5.

Finally, the Petitioner, George A. Foudos, testified regarding his acquisition of the properties in 1971, and also with respect to the many improvements he has made to the property, some voluntarily and some required by Baltimore County, all of which involved improving the quality of life for the residents thereof.

**QUESTIONS PRESENTED** 

WHETHER THE SUBJECT PROPERTIES, BOTH AS ORIGINALLY CONSTRUCTED AND AS THEY NOW EXIST, COMPLY WITH THE REQUIREMENTS OF THE 1945 BAL-TIMORE COUNTY ZONING REGULATIONS?

WHETHER THE ADDITION OF THE FIFTH APART-MENT IN THE ONE BUILDING AND THE TWO ADDI-TIONAL APARTMENT UNITS IN THE OTHER BUILDING CONSTITUTE EXPANSION OF A NON-CONFORMING USE OR MERE INTENSIFICATION OF THE USE?

06/27/88:211.MP:ECC3205-10

cc: Peoples Counsel

Anthony DiPaula, Esquire

Both of the subject properties conform to the requirements of the 1945 Baltimore County Zoning Regulations. Under the initial regulations, these properties were zoned "D" residential which permitted any use permitted in a "C" residence zone, plus others, and apartment houses were a permitted use in a "C" zone. See 1945 B.C.Z.R., Section V.A.2. The "D" residential classification was the precursor to D.R.10.5 as the properties are now zoned. Thus, the use did not become non-conforming until the adoption of the 1955 regulations.

The primary issue in this case is whether the addition of one extra dwelling unit in 2502 Yorkway, and two additional dwelling units in 2508 Yorkway constitutes expansion of what would be a valid existing non-conforming use as of the enactment of the 1955 Baltimore County Zoning Regulation, or mere intensification of that use.

The purpose of the hearing in the instant case was to establish these two buildings as valid non-conforming uses. There is at least a strong inference that the buildings existed prior to the enactment of the 1945 Regulations, which would therefore establish their non-conformance without question. If in fact these two particular buildings were completed subsequent to the 1945 Enactment, then at least they were conforming with the regulations that existed at that time and would not have become non-conforming until the enactment of the 1955 regulations. Having shown through the testimony the continuous use of the

06/27/88:211.MP:ECC3205-10

subject properties, which use has remained the same from the very beginning, it seems beyond cavil that at the very least these two buildings with four dwelling units in each constitute valid, existing non-conforming uses.

With that as a premise, the question of expansion or intensification becomes a factual one with each case turning on its own facts. Phillips v. Zoning Commissioner, 225 Md. 102, 109 (1961). The Courts of Maryland have been called upon to decide the question of enlargement versus intensification on several occasions, and have laid down basic definitional guidelines. In the case of Prince George's County v. E.L. Gardner, Inc., 47 Md. App. 471 (1981), the Court of Special Appeals stated:

> A distinction is to be drawn between the enlargement or extension of non-conforming uses and intensification of such lawful uses. An increase in floor space either arising from an addition to an existing building or in a separate building; an increase in the area of a lot used for non-conforming uses; or a change in business methods or the provision of new accessory facilities with the resulting extension of the use involved have all been held to be proposals for the enlargement of a non-conforming use. Conversely, an increase in the volume of an existing business is usually referred to as an intensification rather than enlargement and such an intensification has been permitted under a valid non-conforming use. A distinction is sometimes made between extension and enlargement with the former referring to increased use of existing floor area within a building and the latter to the construction of a larger build-

Id. at 476 (Emphasis added).

MICHAEL B. DALLAS Registered Surveyor SUITE 200 24 W. PENNSYLVANIA AVENUE TOWSON, MD. 21204

#311

494-0020

ZONING DESCRIPTION 2502 YORKWAY

REGINNING for the same on the southwest side of Yorkway (40) (eet wide) at a point distant 900.89 feet from the intersection of Yorkway and Leeway, which said point is intended to be in line with the centerline of a partition wall between the building erected on the lot now being described and the building erected on the lot next adjacent to the southeast, thence Northwesterly running and binding along said southwest side of Yorkway (40 feet wide) by a line curving to the left having a radius of 1329 feet the arc distance of 49 feet to a point in line with the centerline of a partition wall between the building on the lot now being described and the building erected on the lot next adjacent to the northwest, thence running and binding along said lastly described centerline South 25 degrees 33 minutes 44 seconds West 100 feet to the northeast side of a 14 foot alley there situate, thence Southeasterly running and binding along said northeast side of said 14 foot alley by a curve to the right having a radius of 1229 feet the arc distance of 49.01 feet to a point in line with the centerline of said partition wall above firstly described, thence running and binding along said centerline North 25 degrees 33 minutes 44 seconds East 100.52 feet to the southwest side of said Yorkway (40 feet wide), and the place of beginning.

THE IMPROVEMENTS THEREON being known as No. 2502 Yorkway. CONTAINING 0.1128 Acres of land, more or less.

06/27/88:211.MP:ECC3205-10

Under that definition, the additional dwelling units added to the Foudos buildings constitute mere intensification. No additions were added to the buildings, nor were separate buildings constructed. Mr. and Mrs. Foudos' predecessors in title simply made increased use of the existing floor area within the building. It would make no difference whether they decided to remove all petition walls from the first floor of the building where two of the original four dwelling units were located, and then repartitioned that floor to constitute three units instead of two, or that they decided to finish what was an unfinished basement level. The increased use did not change the floor area of the building, nor did it alter the use in any way. It constitutes an increase in volume only.

In the case of Nyberg v. Solmson, 205 Md. 150 (1954), the Court of Appeals reached a similar conclusion in deciding whether a property owner who had an undisputed non-conforming use for the storage of ten cars, and the parking and washing of motor vehicles in general, had unlawfully enlarged his non-conforming use by storing thirty to fifty cars and increasing the volume of his operation. The Court found that the acts of the property owner constituted ". . . not an extension but merely an intensification of a long continued non-conforming use". Id. at 161. Similarly, in the case of Feldstein v. Zoning Board, 246 Md. 204 (1967), the Court found that the increase in height of junk and

> CERTIFICATE OF POSTING 88-456-SP# ZONING DEPARTMENT OF BALTIMORE COUNTY

<u> </u>	7.15
District 12Th	Date of Posting 5/1/87
Posted for: Space 16 / Hearing	
Posted for:	- F 11/4
Petitioner: Goonge A. Fou dus	127 11/11/11/11/11
Location of property: 5/5 1/0x/twou	131 W/110-11/31/ W/
Frais Vmk 4	loy of nux 75' Fx you dway
Location of Signs:	
on froptonty of Patilio	04.2
Remarks:	Date of return: 5/6/87
Posted by Signature	Date or return:

	the same of the sa
9	"DUPLICATE"
	CERTIFICATE OF PUBLICATION
NOTICE OF HEARING	
e Zoning Commissoner of Balti- county, by authority of the ng Act and Regulations of Balti- county will hold a public ing on the property identified in in Room 106 of the County	TOWSON, MD.,
e Building, located at 111 **. sameake Avenue in Towson,	THIS IS TO CERTIFY, that the annexed advertisement w
yland as follows: Petition for Special Hearing Case number: 88-456-SPH	published in THE JEFFERSONIAN, a weekly newspaper print
55 Yorkway, 125' =/- E of Admiral Boulevard (2502 Yorkway)	and published in Towson, Baltimore County, Md., appearing
12t Election District — 7th Councilmanic District Petitioner(s): George A. Foudos,	april 28, 19. 88
et ux Hearing Date: Wednesday May 18, 1988 at 10:00 a.m.	
iforming use of a rive (5) unitarity	THE JEFFERSONIAN,
in the event that this Petition is inted, a building permit may be used within the thirty (30) day apal period. The Zoning Commissioner will, however, entertain any juest for a stay of the issuance of	Suman Sander Debroad
uest for a stay of the period for	XIX AMPLANT

must be in writing and received in this office by the date of the hearing set above or presented at the hear-

Publisher

06/27/88:211.MP:ECC3205-10

scrap metal in a junkyard, without enlarging the lot size upon which the junk was stored, and in no way changing the character and nature of the operation, constituted an intensification and not an expansion or extension. Id. at 211.

CONCLUSION

In summary, those who owned the subject properties prior to Mr. and Mrs. Foudos did no more than intensify the long standing non-conforming use of the properties, that of apartment dwellings. The buildings were originally constructed as fourunit dwellings and have been intensified to five and six units, respectively. The character of the use has never changed in any respect, nor has the exterior physical appearance of the buildings. There has never been any enlargement or expansion of the building structures, only an increase in volume. Having established beyond cavil the continued use of the buildings and that the buildings themselves constitute valid non-conforming uses, the additional dwelling units added to each should also be permitted within the intensification doctrine under established Maryland law.

Respectfully submitted, o o o no Anthony J./DiPaula Covahey & Boozer, P.A. 614 Bosley Avenue Towson, Maryland 21204 (301) 828-9441

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whereast the section of the Baltimore County Zoning Regulations, to determine whereast the section of the Baltimore County Zoning Regulations. ther or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve The non-conforming use of a five (5) unit apartment dwelling in a D.R.10.5 zone. Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County. I We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition Contract Purchaser: Legal Owner(s): George A. Foudos (Type or Print Name) (Type or Print Name) Evelyn M. Foudos (Type or Print Name) \* Covelyn 11 Houdos City and State 5 11,985 Attorney for Petitioner: E 24,000 Edward C. Covahey, Jr. 2 Elmhurst Avenue 235-6733 (Type or Print Name) Phone No. Baltimore, Maryland 21210 14 Bosley Avenue Name, address and phone number of legal owner, contract purchaser or representative to be contacted owson, Maryland 21204 Edward C. Covahey, Jr. City and State orney's Telephone No.: 828-9441 614 Bosley Avenue 828-9441 AddressTowson, MD 21204 Phone No ORDERED By The Zoning Commissioner of Baltimore County, this \_\_\_\_\_day March, 1988, that the subject matter of this petition be advertised, as uired by the Zoning Law of Baltimore County, in two newspapers of general circulation through-Baltimore County, that property be posted, and that the public hearing be had before the Zoning nmissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore inty, on the \_\_\_\_\_ day of Mary \_\_\_\_, 1988, at 10 o'clock Zoning Commissioner of Baltimore County.

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Mr. & Mrs. George A. Foudos 2 Eleturat Avenue Baltimore, Maryland 21210

Baltimore County

J. Robert Haines

Zoning Commissioner Office of Planning & Zoning

Towson, Maryland 21204

Petition for Special Hearing Case Numbers 88-456-SPH SS Yorkway, 125'±/- E of Admiral Boulevard (2502 Yazkway) 12th Election District - 7th Councilmenic District Petitioner(s): George A. Foudos, et ux HEARING SCHEDULED: MEDIESDAY, MAY 18, 1938 at 10:00 a.m. Dear Mr. & Mrs. Foudos:

Z.C.O.—No. 1 ESTIMATED LENGTH OF HEARINGOVER)-1/2HR. +1H9.

AVAILABLE FOR HEARING

MON./TUES./WED. - NEXT TWO HOUSES

Please be advised that 93.02 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do <u>not</u> remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office
Building, Room 111 Towson, Maryland 21204 5465555 (15)

your hearing is schedule	ed to beef	and 21204 fif	teen (15) minutes before
BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT		52437	an and post set(s), there se for each set not
DATE 5/15/88 ACCOUNT	02	<u> </u>	yours,
RECEIVED PROSES TENDER	_7.24 2		- Vaines
	5/15/	Phoney	INES ssioner of Inty
FOR:	, ,	, (	)

P CERTIFICATE

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Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

Petition for Special Hearing

J. Robert Haines
Zoning Commissioner

Merch 21, 1988

#### NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

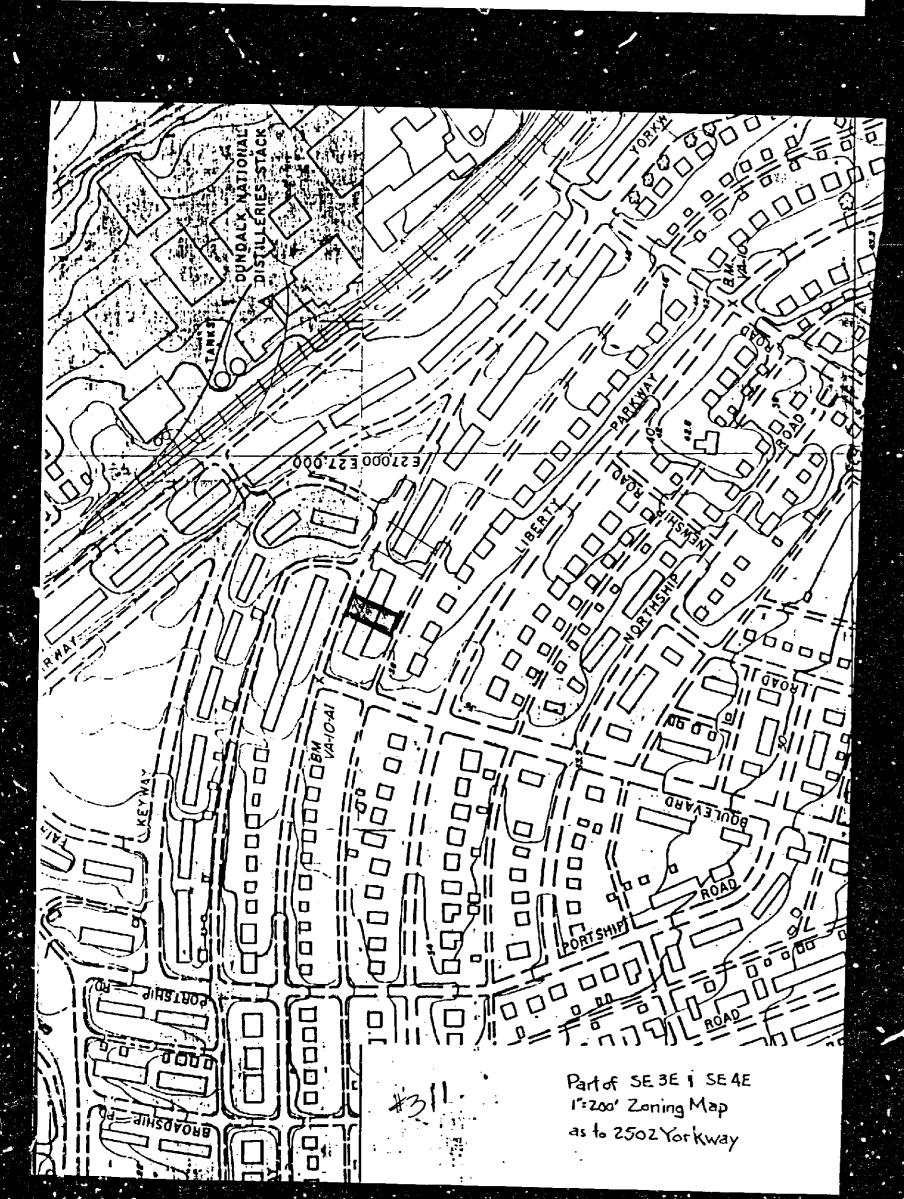
Case Almbers 88-450-SPH
SS Yorkway, 125's/- E of Admiral Bouleverd
(2502 Yorkway)
12th Election District - 7th Councilmenic District
Petitioner(s): George A. Foudos, et ux
HEARING SCHEDULED: MEDNESDAY, MAY 18, 1986 at 10:00 e-ma

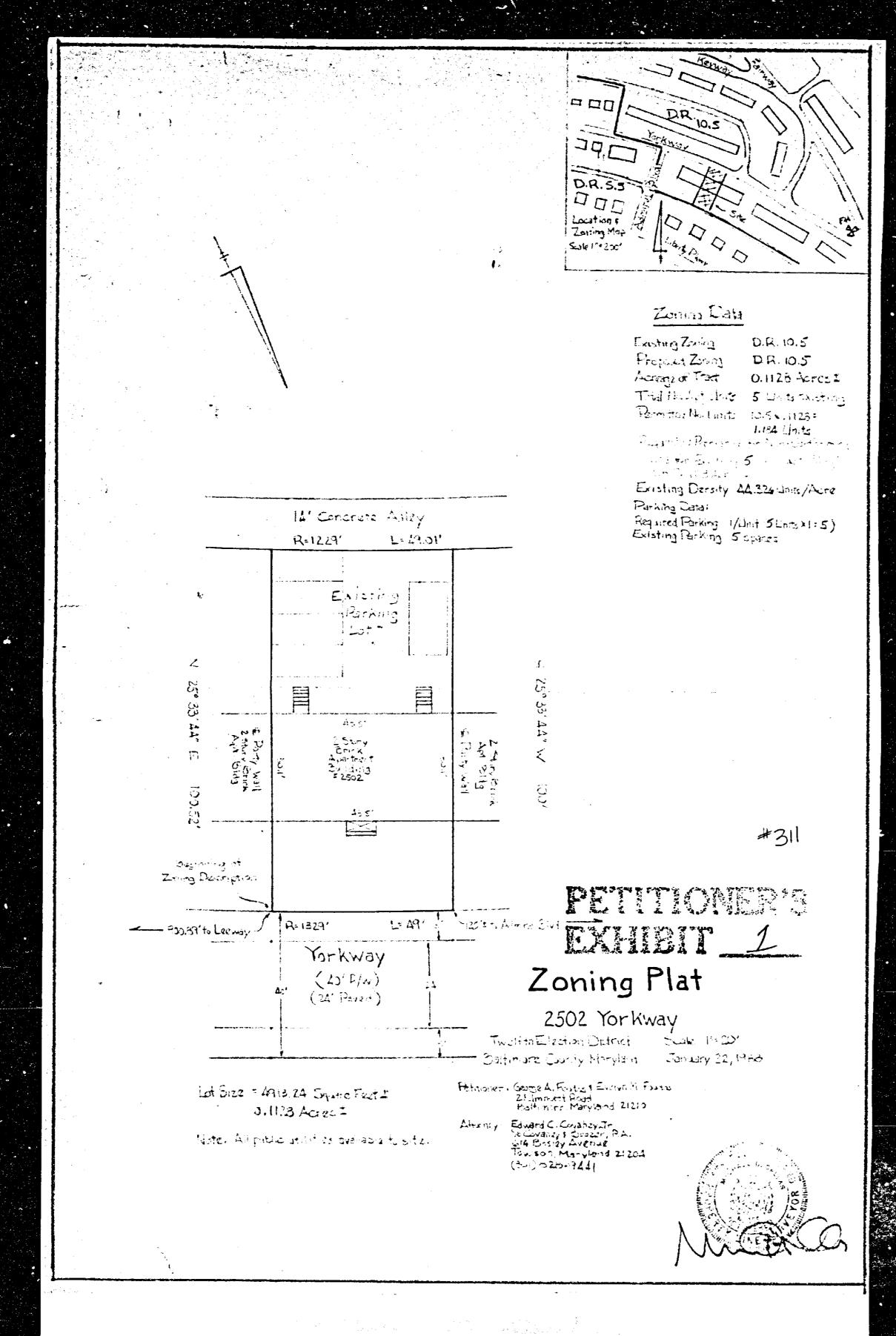
Special Hearings The non-conforming use of a five (5) unit epertment dualling in a D.R.10.5 zone.

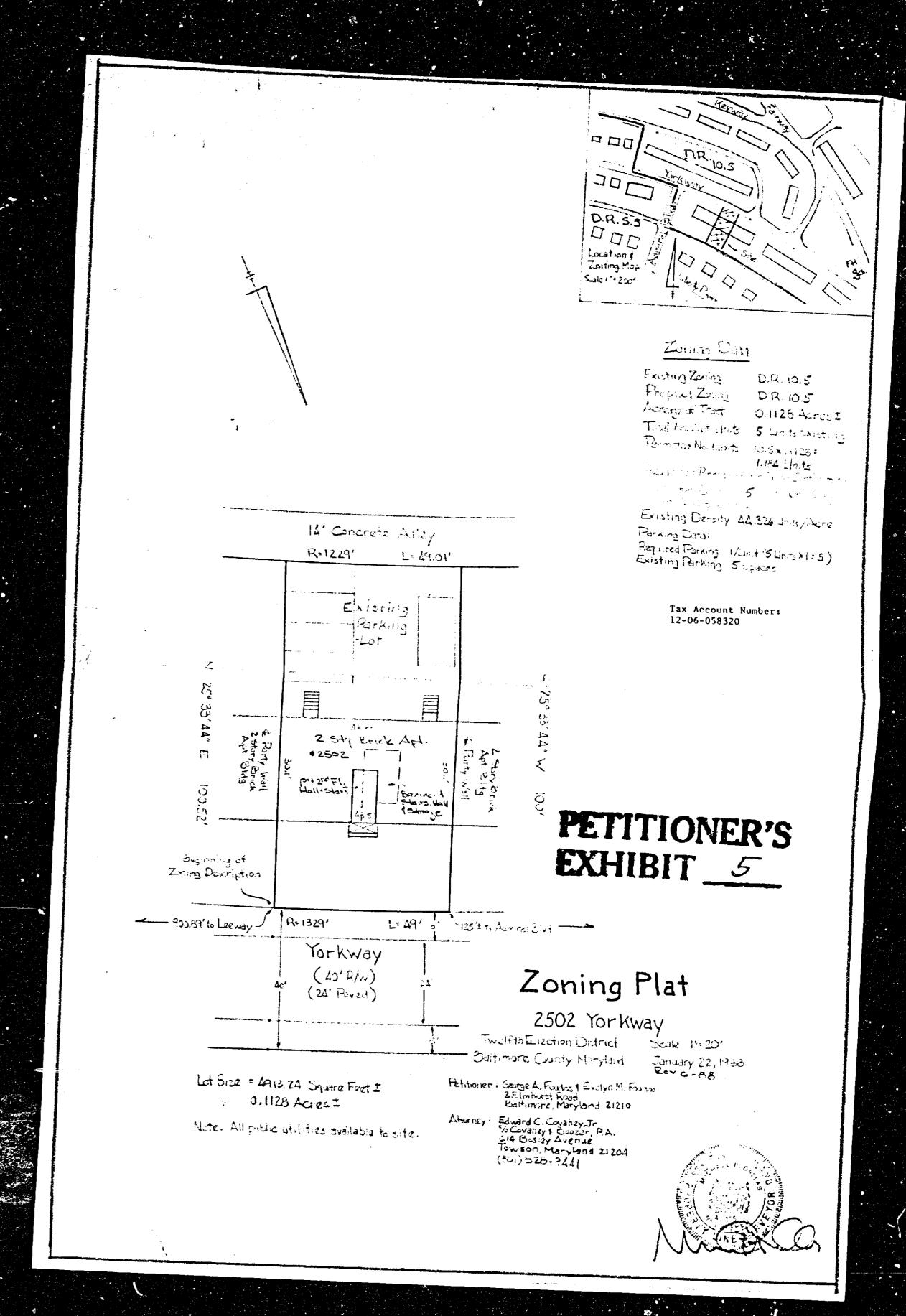
In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

CC: George A. Foudos, et ux Edward C. Covahey, Jr., Esq.







88-455-SP8

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

Your petition has been received and accepted for filing this day of March

ZONING COMMISSIONER

Petitioner George A. Foudos, et ux Received by: Attorney Edward C. Covahey Jr.

Edward C. Covahey, Jr.

Towson, Maryland 21204

614 Bosley Avenue

Dear Mr. Covahey:

Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 2, 1988

RE: Item No. 311 - Case No. 88-456-SPH

Petition for Special Hearing

Petitioner: George A. Foudos, et ux

The Zoning Plans Advisory Committee has reviewed the plans

submitted with the above referenced petition. The following

comments are not intended to indicate the appropriateness of the

zoning action requested, but to assure that all parties are made

aware of plans or problems with regard to the development plans

that may have a bearing on this case. Director of Planning may

file a written report with the Zoning Commissioner with

Enclosed are all comments submitted from the members of the

Committee at this time that offer or request information on your

petition. If similar comments from the remaining members are

received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed

Very truly yours,

games & Sylde

Zoning Plans Advisory Committee

filing certificate and a hearing scheduled accordingly.

recommendations as to the suitability of the requested zoning.

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave.

MEMBERS Bureau of

Engineering Department of Traffic Engineering Fire Prevention Health Department Project Planning

Building Department Board of Education Industrial Development

State Roads Commission Zoning Administration

JED:dt Enclosures

> CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

88-457-SPH

District 10 cm

Pested for: IPPED | Dete of Posting 11/6/87

Petitioner: George & Fou Societ ux

Location of property: S/S Yorkway 970' w/Hdmire/ Blvd.

2508 Yorkway

Location of Signe/octing Yorkway 970' w/Hdmire/ Blvd.

Own and J Pffina Number of Signa:

Baltimore County Fire Department Towson, Maryland 21204-2586 494-4500

March 10, 1988

Paul H. Reincke Chief J. Robert Haines Zoning Commissioner Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204



Re: Property Owner: George A. Foudos, et ux

Location: S/S Yorkway 125' +- E. of Admiral Blvd. Zoning Agenda: Meeting of 3/8/88 Item No.: 311

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at \_\_\_\_

EXCEEDS the maximum allowed by the Fire Department. ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Pro-tection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

REVIEWER: At 10-18 Approved:

Planning Group
Special Inspection Division

Noted and Approved:

Fire Prevention Bureau

Fire Prevention Bureau

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

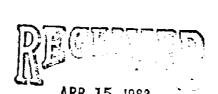
Mr. J. Robert Haines Date April 13, 1988 TO Zoning Commissioner

P. David Fields FROM Director of Planning and Zoning Zoning Petition Nos. 88-452-SpH 88-453-SpH, 88-454-SpH, SUBJECT\_88-456-SpH, 88-457-SpH

In view of the subject of this petition, this office offers no comment.

PDF:JGH:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel



ZONING CFFICE

CC: Edward C. Covakey, B. Erg.
4-18-84

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

J. Robert Haines

October 26, 1988



Baltimore County Board of Appeals County Office Building, Room 315 Towson, Maryland 21204

RE: Petition for Special Hearing SS of Yorkway, 270' /-W of Admiral Boulevard (2502 Yorkway)

7th Election District, 12th Councilmanic District George A. Foudos, et ux - Petitioners Case No. 88-456-SPH

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on September 9, 1988 by Anthony J. DiPaula. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

> J. ROBERT HAINES Zoning Commissioner

JRH:cer

Enclosures

cc: Anthony J. DiPaula, Covahey & Boozer, P.A. 614 Bosley Avenue, Towson, Maryland 21204

Mr. & Mrs. George A. Foudos, 2 Elmhurst Avenue, Balto., Md. 21210

People's Counsel of Baltimore County Rm. 304, County Office Bldg., Towson, Md. 21204

File

COVAHEY & BOOZER, P. A. ATTORNEYS AT LAW 614 BOSLEY AVENUE TOWSON, MARYLAND 21204 AREA CODE 301 828-944!

EDWARD C. COVAHEY, JR. F VERNON BOOZER MARK S. DEVAN ANTHONY J. DIPAULA THOMAS P. DORE

September 8, 1988

SUITE 101 606 BALTIMORE AVE TOWSON, MD. 21204 AREA CODE 301 828-5525

ANNEX OFFICE

HAND DELIVERY

Mr. J. Robert Haines Baltimore County Zoning Commissioner County Courts Building Towson, Maryland 21204

People's Counsel

Re: Special Hearing - Case No.: 88-456-SPH Petitioners: George A. Foudos, et ux 2502 Yorkway

Dear Mr. Haines:

AJD/vjg

Please enter an appeal to the Board of Appeals from the decision rendered on August 24, 1988. Enclosed is a check to cover the cost of same.

CC: OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT DATE 9-14-58 ACCOUNT 000-006-6150 SEP 9 1988 AMOUNT \$ 90.00 PATHONY VI LAND 1 ZONING OFFICE GFORGE FOUNDS, CT UX (cu) ₿ 820\*\*\*\*\*\$\$C50:a \_15±F VALIDATION OR SIGNATURE OF CASHIER PRIX - AGENCY YELLOW - CUSTOMER

FAX 301-296-2131

Customer Relations Department

November 12, 1987

George Foudos 2 Elmhurst Road Baltimore, MD 21210 Dear Mr. Foudos:

Thank you for your recent inquiry regarding the properties at 2508 Yorkway and 2502 Yorkway. I have listed the information from our oldest records below:

Petition for Special Hearing
SS of Yorkway, 270' /-W of Admiral Boulevard

(2502\_Yorkway)

Ith Election District - 712th Councilmanic District

Case No. 88-456-SPH

2. Notice of available apartment houses

3. Gas & Electric records of meters

Patrick Keller, Office of Planning & Zoning

Ann M. Nastarowicz, Deputy Zoning Commissioner

BALTIMORE

GAS AND

ELECTRIC

CHARLES CENTER • P.O. BOX 1475 • BALTIMORE, MARYLAND 21203

J. Robert Haines, Zoning Commissioner

James E. Dyer, Zoning Supervisor

4. General Assessments chart

5. Zoning Plat (2502 Yorkway)

SPH-non-conforming use of a 5 unit apt. dwelling in a DR 10.5 zone.

Entry of Appearance of People's Counsel (None Submitted)

Petitioner's Exhibits: 1. Zoning Plat (2502 Yorkway)

Zoning Commissioner's Order dated August 24, 1988 (Denied)

Docket Clerk

Edward C. Covahey, Jr., Esq., counsel for Petitioner

614 Boslev Avenue

a. Jullan

Towson, MD. 21204

cc: Anthony J. DiPaula, Covahey & Boozer, P.A. 614 Bosley Avenue, Towson, Maryland 21204

Notice of Appeal received September 9, 1988 from Anthony J. DiPaula

People's Counsel of Baltimore County
Rm. 304, County Office Bldg. Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning

Mr. & Mrs. George A. Foudos, 2 Elmhurst Avenue, Balto., Md. 21210

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Memorandum of Law

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

George A. Foudos, et ux - Petitioner

2502 Yorkway, \*Apt. E Gas Meter:

Installed September 1957 Electric Meter: Installed September 1977 2508 Yorkway, \*Apt. E

Installed January 1974 Electric Meter: Installed January 1975

2508 Yorkway \*Apt. F Gas Meter: Installed February 1975 Electric Meter: Installed July 1957

Should you have any further questions regarding this matter, please call me at 234-5132.

> Sincerely, a. Crothetin

A. Constantine Customer Representative

AC/rdg

BIE 3

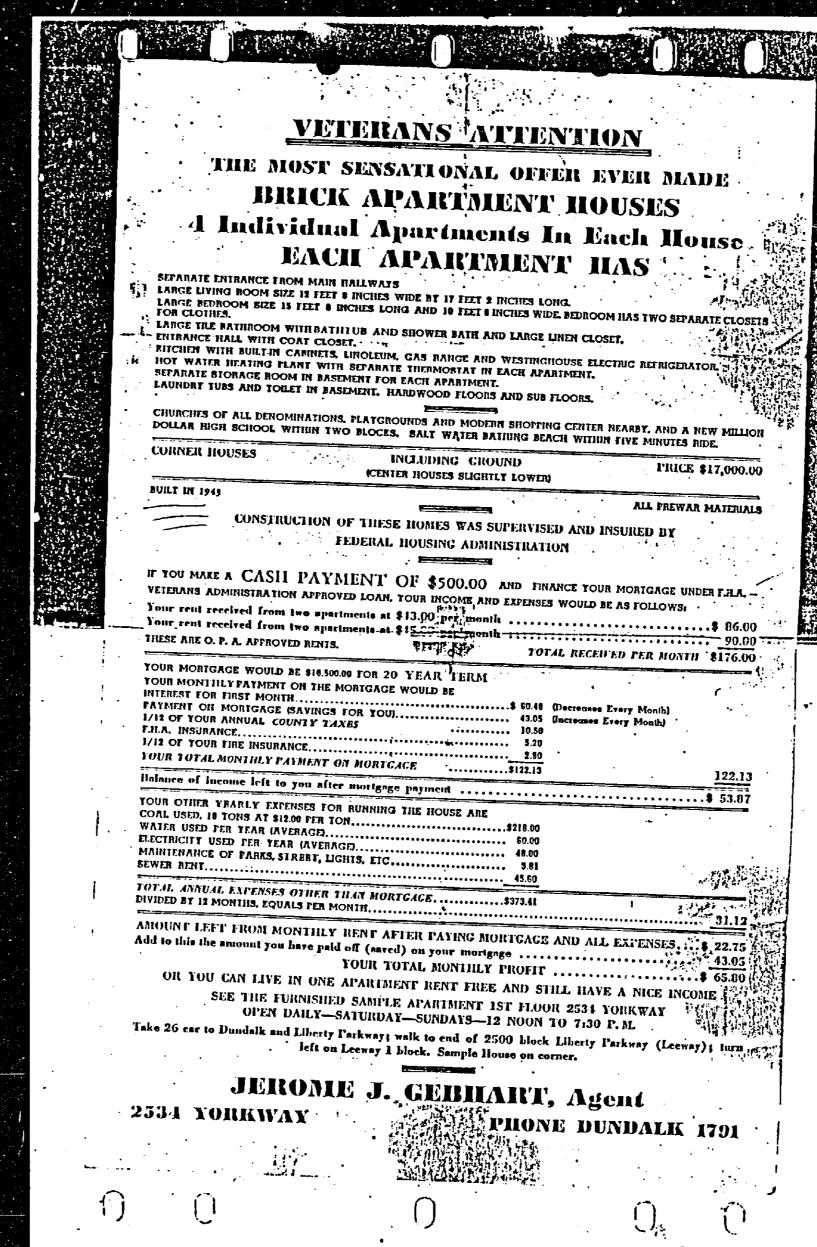
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01/26/89:21.cb:3205-10:ecc COUNTY BOARD OF APPEALS W 89 JAN 26 PM 4: 18 IN RE: PETITION FOR SPECIAL HEARING BEFORE THE SS of Yorkway, 270'/-W OF Admiral Boulevard \* BOARD OF APPEALS (2502 Yőrkway) 7th Councilmatic District \* OF BALTIMORE COUNTY 12th Election District \* Case # 88-456-SPH George A. Foudos, et ux. Petitioners/Appellants \* \* \* \* \* \* \* \* \* <u>SUBPOENA</u> Betty Alford or her designee Tax Assessments and Transfer Office REASON NOT SERVED for Baltimore County 105 West Chesapeake Avenue Jefferson Building, 2nd Floor OF BALTIMORE COUNTY LEDWARD MALONE Towson, Maryland 21204 Produce documents or objects at the County Board of Appeals, Room 315 County Office Building, Towson, Maryland 21204, on Wednesday, the 8th day of February, 1989 at 10:00 a.m. YOU ARE COMMANDED TO produce the following documents or objects: all real property assessment records with respect to the properties known as 2502 and 2508 Yorkway (12th District) for the years 1953 through 1956. This Subpoena was requested by Anthony J. DiPaula, counsel for the Petitioners/Appellants, and all questions should be referred to him at 614 Bosley Avenue, Towson, Maryland 21204, (301) 828-9441. Date Issued: NOTICE: (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA. (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court. Mr. Sheriff: Please issue the above summons.

01/26/89:21.cb:3205-10:ecc (3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d). SHERIFF'S RETURN ( ) - Served and copy delivered on date below. ) - Unserved, by reason of

ZONING DEPARTMENT OF BALTIMORE COUNTY

Posted for: 11900	Date of Posting 71/6/87
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Petitioner: 69079 / Foudes	e Tox
Location of property: 5/5 Youkway 12:	51 W/Admiral Blod.
2502 YOUR WILL	
Location of Signer Forty of Felilanin	0/2,200, 75" F-2. 200 dway,
on property of Fellows	
Remarks:	
Posted by Affically	Date of return: 1'/11/85
Signature Number of Signs:	



PETTION 3 EXHIDIT 2



EDWARD C. COVAHEY, JR. F. VERNON BOOZER MARK S. DEVAN ANTHONY J. DIPAULA THOMAS P. DORE

FAX 301-296-2131

828-9441

DREPLY TO: ANNEX OFFICE SUITE IOI 805 BALTIMORE AVE TOWSON, MD. 21204 AREA CODE 301

September 8, 1988

Baltimore County Zoning Commissioner

Re: Special Hearing - Case No.: 88-456-SPH Petitioners: George A. Foudos, et ux 2502 Yorkway

Dear Mr. Haines:

HAND DELIVERY

Mr. J. Robert Haines

County Courts Building Towson, Maryland 21204

Please enter an appeal to the Board of Appeals from the decision rendered on August 24, 1988. Enclosed is a check to cover the cost of same.

People's Counsel

ZUMMAG OHFICE (an)



County Board of Appeals of Baltimore County COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204

(301) 887-3180

February 21, 1989

Anthony J. DiPaula, Esquire COVAHEY & BOOZER, P.A. 614 Bosley Avenue Towson, MD 21204

> RE: Case No. 88-456-SPH and Case No. 88-457-SPH George A. Foudos, et ux

Dear Mr. DiPaula:

Enclosed is a copy of the final Opinion and Order issued this date by the County Board of Appeals in the subject

Administrative Secretary

Encl.

cc: Mr. & Mrs. George Foudos Edward C. Covahey, Jr., Esquire P. David Fields Pat Keller J. Robert Haines Ann M. Nastarowicz James E. Dyer Docket Clerk -Zoning Arnold Jablon, County Attorney
Honorable Dale T. Volz
Michael B. Dallas Mr. J. Carroll Mueller Assessments



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 494-3180

November 14, 1988 NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL

CASE NO. 88-456-SPH and NO. 88-457-SPH

GEORGE A. FOUDOS, ET UX SS Yorkway, 125' +/- E of Admiral Blvd. & SS Yorkway, 270' +/- W of Admiral Blvd. SPH-Nonconforming use 12th Election District

County Council

tt tt tt

WEDNESDAY, FEBRUARY 8, 1989, at 10. a.m. and WEDNESDAY, FEBRUARY 8, 1989, at 1 p.m.

cc: Anthony J. DiPaula, Esq. Counsel for Petitioners Mr. & Mrs. Geo. Foudos Petitioners People's Counsel Out you Shirley Edward C. Cowahey, Jr., Esq. Counsel for Petitioners

Hon. Dale T. Volz Michael B. Dallas

J. Carroll Mueller Arnold Jablon, Esq. Law Office P. David Fields Planning & Zoning Patrick Keller

J. Robert Haines Ann Nastarowicz James E. Dyer

Docket Clerk Assessments

June Holmen, Secretary

Election District of Baltimore County.

COUNTY BOARD OF APPEALS BALTIMORE COUNTY CASE NO. 88-456-SPH

CASE NO. 88-457-SPH 

OPINION

These cases come to the Board on appeal from a decision of the Zoning Commissioner which granted in part and denied in part the Petitions for Special Hearing in Case No. 88-456-SPH and Case No. 88-457-SPH in the 12th

Upon mutual agreement by all parties, these cases were consolidated to be heard simultaneously. Case No. 88-456-SPH concerns the property known as 2502 Yorkway containing five living units and Case No. 88-457-SPH identified as 2508 Yorkway containing six living units. The matter before the Board concerns the alleged nonconforming use to be afforded these two buildings.

Testimony was received from George Foudos, 2 Elmhurst Avenue, the owner of both buildings purchased in 1971. At that time, 2502 contained five units and 2508 contained six units, the additional units in these two buildings being utilized in the basements. It was his testimony that these extra units were added some time around 1957.

Michael B. Dallas, property line surveyor, submitted site plans as Petitioner's Exhibit #1 and #2 and testified that existing zoning was D.R. 10.5 and that his investigation indicated that the zoning prior to 1945 was D -

Mrs. Nancy Capecci testified of her knowledge of these two specific sites and the area in general. It was her testimony that she purchased

Case No. 88-456-SPH and Case No. 88-457-SPH George A. Foudos, et ux

2528 Yorkway in December of 1946, lived there until 1962, rented it until 1985 and sold it in February of 1985. She entered as Petitioner's Exhibit No. 3 a flyer advertising the properties for sale that occasioned her original purchase

Griffith Davis, a former owner of 2510 Yorkway, testified that he owned the property in 1960, that he knew 2508 well, that it had always been rented, and that his knowledge in 1960 was that 2502 had five units and 2508 contained six units. It was his testimony that it was common throughout the area for the end-of-group units to contain six apartments and the middle-ofgroup units to contain five apartments.

Kathy Phillips from the Baltimore County Assessments Office presented Assessment records back to 1949 indicating both buildings to contain only four apartments. No records between 1949 and 1955 were presented. This concluded Petitioner's case.

The brief summary presented above is merely a general summation of the testimony presented. But the record will contain the complete testimony and will stand as such.

It is clear to this Board that these apartment buildings were erected circa 1943 and each contained four apartments, two on the first floor and two on the second, and were constructed with the proper zoning afforded them at that time. In 1955, the zoning regulations were changed, and these fourunit apartment buildings became a legitimate nonconforming use. It appears from the testimony presented this day that, as long as the original builder owned the units, each contained four units. When the units were sold to individuals, some time in the 1946 area, individual owners added the fifth and sixth units in the basement. No testimony was received as to precisely when

Case No. 88-456-SPH and Case No. 88-457-SPH George A. Foudos, et ux

this was accomplished nor to the area encompassed in the additional units. The Board will find as a fact that the legitimate nonconforming use encompasses the use of the building as four residential units. The Baltimore County Zoning Regulations (B.C.Z.R.), Section 104.1, state: "No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25% of the ground floor area of the buildings so used." Since the Board is finding as a fact that the use of the building encompasses four residential units, the fifth unit under the conditions stated in 104.1 would be a legal expansion of the four original uses. The expansion of the use to six residential uses would exceed the limitations imposed in 104.1. It is therefore the opinion of this Board that the use of 2502 Yorkway as a five-unit apartment dwelling should be allowed. It is the further opinion of this Board that the use of 2508 Yorkway as a sixunit apartment dwelling exceeds the allowable expansion of the original nonconforming use and must be reduced to five apartments.

ORDER

It is therefore this 21st day of February , 1989 by the

County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing for nonconforming use of 2502 Yorkway in Case No. 88-456-SPH Case No. 88-456-SPH and Case No. 88-457-SFH George A. Foudos, et ux

as a five-unit apartment dwelling be and the same is GRANTED;

IT IS FURTHER ORDERED that the Petition for Special Hearing for a six-apartment use at 2508 Yorkway in Case No. 88-457-SPH be and the same is DENIED in part; and

IT IS FURTHER ORDERED that the building known as 2508 Yorkway in Case No. 88-457-SPH be allowed a legitimate nonconforming use of five units.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Harry E. Buchheister, Jr.

IN RE: PETITION FOR SPECIAL HEARING \* BEFORE THE SS of Yorkway, 270' /-W of ZONING COMMISSIONER Admiral Boulevard (2502 Yorkway) OF BALTIMORE COUNTY 7th Councilmanic District 12th Election District CASE # 88-457-SPH George A. Foudos, et ux Petitioners

> \*\*\*\*\* FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to approve a nonconforming use of a 6 unit apartment building in the D.R. 10.5 zone as more particularly described on Petitioner's Exhibits 1 and 3.

The Petitioner, George A. Foudos, represented by Anthony DiPaula, appeared and testified. Also appearing on behalf of the Petitioner were Nancy E. Capecci, Anita Cavoures, Griffin Davis and Kathy Phipps, representing the State Department of Assessment and Taxation and Michael Dallas, Registered Land Surveyor. There were no Protestants.

Testimony indicated that the subject building was constructed during the period of approximately 1943 thru 1946. The building and lot is commonly referred to as 2508 Yorkway in the 12th Election District. Property is currently zoned D.R. 10.5 and is improved with an apartment building consisting of 6 units. The original building had 4 apartments. There are two units on the first floor and two units on the second floor and two units in the basement. The remaining portion of the basement is improved with storage and utility space. The subject property is also serviced by a rear parking area which is accessed off of a common alley.

The testimony and evidence in the records substantiates that the building was originally constructed as a four unit apartment building. The property has been consistently used as an apartment building since

its original development.

The Petitioners stated that they acquired the property in 1971. They testified that the buildings have been in continuous use as apartments since their purchase. The Custodian of Assessment of Records from the State of Maryland Assessment and Taxation testified the earliest assessment shown for the subject property is 1948. This assessment states there were 4 apartment units located in the structure at that time.

The evidence tends to indicate that the subject property was zoned "D" residential during the 1945 Baltimore County Comprehensive Zoning. "D" residential as set forth in the 1945 Baltimore County Zoning Regulations (B.C.Z.R.) also permitted all uses in "C" residential which permitted, as a matter of right, apartment houses. During the 1955 zoning regulations revisions, the zoning classification for the subject site was changed. The regulations did not permit apartment houses and, therefore, the subject property became nonconforming as of the adoption of the 1955 regulations.

The evidence establishes that the exterior parameters of the subject building has not changed or been altered since the original construction. There has not been any additional construction to the subject building. However, the interior area has been improved to accommodate 2 basement level apartments. There is no evidence that the additional apartments on the basement level were in existence prior to the early 1960s.

The first issue to be determined in the nonconforming case is whether or not the subject property was legally and permissibly developed prior to the statutory change which creates the alleged

nonconforming status. In reference to subject property known as 2508 Yorkway, the 4 apartment building was permitted and/or constructed prior to the adoptions of the 1945 zoning regulations. It is equally clear that the structure was in conformity with the "D" residential zoning which was placed upon the subject land in 1945 and was a permissible use, pursuant to the 1945 B.C.Z.R. The 4 apartment building on this site was legally established and operated.

The property known as 2508 Yorkway was a legally permitted use until the regulations were changed on March 30, 1955. At that point in time, the building became a nonconforming use.

The second principal to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not any change that has occurred is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App.257, 385 A2d. 96 (1978).

Clearly, the use of the subject property has not changed since 1943. This has always been an apartment house and there have been no breaks or changes in that use.

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or

not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."

See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A2d. 96 (1978).

The question of expansion or intensification becomes a factual one with each case turning on its own facts. Phillips v. Zoning Commissioner of Howard County, 225 Md. 102, 109 (1961). The Courts of Maryland have been called upon to decide the question of enlargement versus intensification, on several occasions, and have laid down basic definitional guidelines. In the case of Prince George's County v. E.L. Gardner, Inc., 47 Md. App. 47 (1981), the Court of Special Appeals stated:

> A distinction is to be drawn between the enlargement or extension of nonconforming uses and intensification of such lawful uses. An increase in floor space either arising from an addition to an existing building or in a separate building; an increase in the area of a lot used for nonconforming uses; or a change in business methods or the provision of new accessory facilities with the resulting extension of the use involved have all been held to be proposals for the enlargement of a nonconforming use.

SCEIVED FOR FILMS

Conversely, an increase in the volume of an existing business is usually referred to as an intensification rather than enlargement and such an intensification has been permitted under a valid nonconforming use. A distinction is sometimes made between extension and enlargement with the former referring to increased use of existing floor area within a building and the latter to the construction of a larger building.

Id. at 476 (Emphasis added)

The Courts of Maryland have been very clear in their construction of the concepts of intensification, expansion, extension and enlargement. As the Court of Appeals stated in Gardner, an extension is an increase in the use of existing floor area which is not a permitted intensification. Enlargements and extensions are sub-parts of the larger doctrine of expansion.

The facts of this case, clearly, fit the concept of an extension. As stated by the Petitioners, the building was originally constructed with four (4) apartments and an unfinished basement. The fifth and sixth apartments were added some years later, but there is no evidence either was added prior to 1955. Therefore, the floor area existed, but was not in use as apartments. When the fifth and sixth apartments were added, there was an extension of the apartment use to other (basement) existing floor space.

This extension is not a legally permitted intensification and, therefore, is not permitted as an element of the nonconforming use. This extension violates the fourth principal of McKemy set forth above. The fifth and sixth apartments extension also violates the doctrine set forth in the quoted part of Gardner.

From time to time, Section 104 of the B.C.Z.R. has been interpreted to permit a 25% extension when an additional apartment is

added to an existing apartment building. In this case, a four (4) apartment building, adding one (1) apartment as a 25% permitted

This is a very simplistic view of Section 104 of the B.C.Z.R., but it is the wrong application of the case law. Section 104 permits an extension of no more than 25% of the ground floor area of the building in use. In this case, the ground floor area of the building is either two (2) apartments or, in the case of the basement, no ground floor apartments. I am of the opinion that it is incorrect to count apartments on the second floor in this case, or any floor, other than the ground floor in any case. Therefore, 25% of two apartments is not one (1) or two (2) additional apartments.

The uncontradicted testimony, which was amply supported, conclusively indicates that the property has been used continuously and without interruption as a four (4) apartment building since 1945. After due consideration of the testimony and evidence presented, it is clear that a nonconforming use for a four (4) apartment building existed prior to March 30, 1955.

The fifth and sixth apartments located in the basement of 2508 Yorkway must be removed as an illegal extension of the nonconforming

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 247 day of August, 1988 that the approval of a

nonconforming use of a 6 unit apartment building in the D.R. 10.5 zone as more particularly described on Petitioner's Exhibits 1 and 3, be and is hereby DENIED.

IT IS FURTHER ORDERED, that approval of a nonconforming use for four (4) apartments in the building known as 2508 Yorkway in a D.R. 10.5 zone, as more particularly described on Petitioner's Exhibit 1 and 3, be approved and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject to certain restrictions set forth below.

 The Petitioner shall cease operation of the fifth and sixths apartment on or before December

The Petitioner shall submit to the Zoning Commissioner's Office no later than December 1, 1988, a new site plan prepared by a registered professional engineer and/or land surveyor, which clearly identifies all buildings, their size and area dimensions, their exact location on the subject property, their distances from all property lines, showing all terms and conditions of this Order, and any other information as may be required to be a certified site plan.

3. The Petitioner shall permit the Office of Zoning Enforcement to make inspections of the subject property to assure compliance with this

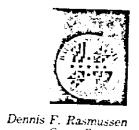
4. The Petitioner shall cause a deed restriction to be placed upon the deed of this property, clearly, referencing zoning case #88-457SPH and restricting the develoment of this property to a maximum of four (4) apartment units.

> J. ROBERT HAINES Haines ZONING COMMISSIONER OF BALTIMORE COUNTY

cc: Peoples Counsel Anthony DiPaula, Esquire

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

J. Robert Haines



Anthony DiPaula, Esquire Covahey and Boozer 614 Bosley Avenue Towson, Maryland 21204

> RE: Petitions for Special Hearing Case No. 88-456-SPH and 88-457-SPH

Dear Mr. DiPaula:

Enclosed please find the decisions rendered on the above captioned cases. The Petitions for Special Hearing have been granted in part and denied in part, in accordance with the attached Orders.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, pleae feel free to contact our Appeals Clerk at 494-3391.

> Very truly yours, J. Robert Haines Zoning Commissioner

cc: Peoples Counsel

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was

published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on april 28, 19 88

THE JEFFERSONIAN.

Gusan Sender Obrest

NOTICE OF HEARING The Zoning Commissoner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building. Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows: Petition for Special Hearing
Case number: 88-457-5PH
SS Yorkway, 27lY ±/- W of
Admiral Boulevard
(2508 Yorkway) (2508 Yorkway) 12th Election District —

J. ROBERT HAINES

7th Councilmanic District Petitioner(s): George A. Foudos et ux
Hearing Date: Wednesday
May 18, 1968 at 10:00 a.m.
Special Hearing: The nonconforming use of a six (6) unit apartment dwelling in a D.R. 10.5 zone.
In the event that this Petition is
granted, a building permit may be
issued within the thirty (30) day appeal period. The Zoning Commisstoner will, however, entertain any
request for a stay of the issuance of
source of the second for
good cause shown. Such request
must be in writing and received in
this office by the date of the hearing
set above or presented at the hearing.

LICATION

P

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

98-457-5PH

District 12 7/2	Date of Posting 5/1/98
Posted for: Special Hearing	
Petitioner: George A. Foy Jos.	otur
Location of property: 5/3 1/orkwoy 1	70'+ W/AG-417=1 B/V&
2508 York Woj	
Location of Signs: Fecting York Way	4 Epprox, 75' Fr roadway.
on so porty of Pelition	107
Remarks:	
Posted by Males Signature	Date of return: 5/6/75
Burken of Cl	•

City and State

#312

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve The non-conforming use of a six (6) unit apartment dwelling in

Property is to be posted and advertised as prescribed by Zoning Regulations. I. or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

		<i>i.</i> ₩₽ <u>}€ 4</u> E
Contract Purchaser:	Legal Owner(s):	4A
	George A. Foudos	12
(Type or Print Name)	(Type or Print Name)	DATE 1/11/9
	1 Sand File	X
Signature	Signature	230
	Evelyn M. Foudos	1000 AF.
Address	(Type or Print Name)	DP
	* Guelyn M. J.	udot
City and State	Signature /	\$ 12,050
Attorney for Petitioner:		E 25,110
	2 Elmhurst Avenue	235-6733
Edward C. Covahey, Jr.	Address	Phone No.
Time of Print District		

Baltimore, Maryland 21210 Name, address and phone number of legal owner, con-tract purchaser or representative to be contacted 614 Bosley Avenue Towson, Maryland 21204 Edward C. Covahey, Jr.

828-9441 Attorney's Telephone No.: 828-9441

Actorney's Telephone No.: 828-9441

Address Towson, MD 21204 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this \_\_\_\_\_ day march, 1988, that the subject matter of this petition be advertised, as equired by the Zoning Law of Baltimore County, in two newspapers of general circulation throughat Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore 18th day of May , 1988, at 10 o'clock

ESTIMATED LENGTH OF HEARING 1/2HR. 4197.

AVAILABLE FOR HEARING MON./TUES./WED. - NEXT TWO MONTHS

#312

MICHAEL B. DALLAS Registered Surveyor SUITE 200 24 W. PENNSYLVANIA AVENUE TOWSON, MD. 21204 494-0020

ZONING DESCRIPTION

2508 YORKWAY

BEGINNING for the same on the southwest side of Yorkway (40) feet wide) at a point distant 726.32 feet from the intersection of Yorkway and Leeway, which said point is intended to be in line with the centerline of a partition wall between the building erected on the lot now being described and the building erected on the lot next adjacent to the southeast, thence Northwesterly running and binding along said southwest side of Yorkway (40 feet wide) by a line curving to the left having a radius of 4080 feet the arc distance of 63.04 feet, thence running South 27 degrees 43 minutes 22 seconds West 102.54 feet to the northeast side of a 14 foot alley there situate, thence running and binding along said northeast side of said 14 foot alley South 58 degrees 41 minutes 32 seconds East 57.95 feet to a point in line with the centerline of said partition wall above described, thence running and binding along said centerline North 00 degrees 34 minutes 04 seconds East 104.42 feet to the southwest side of said Yorkway (40 feet wide), and the place of

THE IMPROVEMENTS THEREON being known as No. 2508 Yorkway. CONTAINING 0.1437 Acres of land, more or less.

beginning.

Q# M134 HEARIN 270'+/ AY) 12t ETITION ING SCH at \$44

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204

J. Robert Haines
Zoning Commissioner

Mr. & Mrs. George A. Foudos 2 Elmhurst Avenue Baltimore, Maryland 21210

Ret Petition for Special Hearing Case Numbers 88-457-SPH SS Yorkway, 270° 4/- W of Admiral Boulevard (2508 Yorkway) 12th Election District - 7th Councilmenic District Patitioner(s): Gaorge A. Foudos, et ux

HEARING SCHEDULED: UEDHESCAY, MAY 18, 1988 at 10:00 a.m. Dret Mr. & Mrs. Foudast

Please be advised that 193.02 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

BALTIMORE COUNTY, MARYLAND fail to return the sign and post set(s), there OFFICE OF FINANCE - REVENUE DIVISION for each set not MISCELLANEOUS CASH RECEIPT \_\_ACCOUNT\_K-01-615-000 

Petition for Special Hearing SS of Yorkway, 270' /-W of Admiral Boulevard (2502 Yorkway) 12th Election District - 7th Councilmanic District GEORGE A. FOUDOS, ET UX - Petitioner Case No. 88-457-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting Certificate of Publication

Copy of Violation Notice

Entry of Appearance of People's Counsel (None submitted)

Zoning Plans Advisory Committee Comments Director of Planning & Zoning Comments

Petitioner's Exhibits: 1. Zoning Plat (2508 Yorkway)

2. Certified Copy of Page 866 (Chart from Department of Assessments & Taxation)

Zoning Plat (2508 Yorkway)

Zoning Commissioner's Order dated August 24, 1988 (Denied 6 Unit Apartment and Granted w/ Restrictions 4 Unit Apartment)

Notice of Appeal received September 9, 1988 from Anthony DiPaula

cc: Mr. & Ars. George A. Foudos, 2 Elmhurst Avenue, Balto., Md. 21210

Mr. Anthony J. DiPaula, Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, Md. 21204

Hon. Dale T. Volz, Baltimore County Courthouse 400 Washington Avenue, Towson, Md. 21204

Michael B. Dallas, Suite 200, 24 W. Pennsylvania Avenue, Towson, Md. 21204

Mr. J. Carroll Mueller, Department of Assessments & Taxation Baltimore Co. Courthouse, 400 Washington Avenue, Towson, Md. 21204

People's Counsel of Baltimore County Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning Patrick Keller, Office of Planning & Zoning J. Robert Haines, Zoning Commissioner Ann M. Nastarowic:, Deputy Zoning Commissioner James E. Dyer, Zoning Supervisor Docket Clerk

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204

J. Robert Haines

## NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

> Patition for Special Hearing Case Yumbers 38-457-5PH 55 Yorkway, 270° 1/- & of Admiral Bouleverd (2505 Yorkway) 12th Election District - 7th Councilmenic District Petitioner(s): George A. Foudos, et ux HEARING SCHEDULED: DEDNESDAY, FRY 18, 1988 at 10:00 c.m.

Special Meanings The non-conforming use of a six (5) unit epertment dualling in a D.R.10.5 zone.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

> COVAHEY & BOOZER, P. A ATTORNEYS AT LAW

> > 614 BOSLEY AVENUE TOWSON, MARYLAND 21204

> > > AREA CODE 301

FAX 301-296-2131

September 8, 1988

Please enter an appeal to the Board of Appeals from the decision rendered on August 24, 1988. Enclosed is a

90.00

Re: Special Hearing - Case No.: 88-457-SPH Petitioners: George A. Foudos, et ux

J. ROBERT HAINES Zoning Commissioner of Baltimore County cc: Councilren Yolz George A. Foudos, et ux Edward C. Covehey, Jr., Esq.

EDWARD C. COVAHEY, JR.

HAND DELIVERY

Dear Mr. Haines:

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT

Mr. J. Robert Haines

County Courts Building

Towson, Maryland 21204

Baltimore County Zoning Commissioner

check to cover the cost of same.

People's Counsel

PROM EDWARD COVAITEY JR.

(ANTHONEY DI YAMA)

GEORGE A. FOUNDS, et ux

B 852(\*

VALIDATION OR SIGNATURE OF CASHIER

9-14-88 ACCOUNT 001-006-6150

2508 Yorkway

F. VERNON BOOZER

ANTHONY J DIPAULA

MARK S. DEVAN

THOMAS P. DORE

COVAHEY & BOOZER, P. A. ATTORNEYS AT LAW

614 BOSLEY AVENUE TOWSON, MARYLAND 21204 AREA CODE 301 828-9441

EDWARD C. COVAHEY, JR. F. VERNON BOOZER MARK S. DEVAN

ANTHONY J. DIPAULA

ANNEX OFFICE SUITE 101 606 BALTIMORE AVE. TOWSON, MD. 21204 AREA CODE 301

88-456 SPH

828-5525

HAND-DELIVERED

Dear Mr. Haines:

J. Robert Haines Baltimore County Zoning Commissioner

RE: IN RE: Petitions for Special

June 30, 1988

George A. Foudos, et ux 2502, 2508 Yorkway

Case Nos.: 88-457 SPH

Enclosed please find five (5) copies each of revised site plans with respect to the above cases as requested on May 18, 1988.

Very truly yours, Anthony J. DiPaula

AJD:smm

RECEIVED ZONING OFFICE DATE: 15-30-88

Enclosures

Part of SE3E & SEAE 1':200' Zoning Map

asto 2508 Yorkway

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

> J. Robert Haines Zoning Commissioner

> > November 1, 1988

Dennis F. Rasmussen

Baltimore County Board of Appeals County Office Building, Room 315 Towson, Maryland 21204

RE: Petition for Special Hearing SS of Yorkway, 270' /-W of Admiral Boulevard (2502 Yorkway) 12th Election District, 7th Councilmanic District George A. Foudos, et ux - Petitioners Case No. 88-457-SPH

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on September 9, 1988 by Anthony J. DiPaula, Attorney on behalf of Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

> J. ROBERT HAINES Zoning Commissioner

JRH:cer

Enclosures

cc: Mr. & Mrs. George A. Foudos, 2 Elmhurst Avenue, Balto., Md. 21210 Mr. Anthony J. DiPaula, Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, Md. 21204

Case No. 88-457-SPH (Appeal GEORGE A. FOUDOS, ET UX - Petitioners November 1, 1988

> Hon. Dale T. Volz, Baltimore County Courthouse 400 Washington Avenue, Towson, Md. 21204

Michael B. Dallas, Suite 200, 24 W. Pennsylvania Avenue, Towson, Md. 21204 Mr. J. Carroll Mueller, Department of Assessments & Taxation Baltimore Co. Courthouse, 406 Washington Avenue, Towson, Md. 21204

People's Counsel of Baltimore County Rm. 304, County Office Bldg., Towson, Md. 21204

ECEIVED ZONING OFFICE

(cus)

O REPLY TO:

SUITE IOI

ANNEX OFFICE

AREA CODE 301

828-5525

606 BALTIMORE AVE.

TOWSON, MD. 21204